

1 CALIFORNIA DEPARTMENT OF INSURANCE
2 LEGAL DIVISION

3 Mary Ann Shulman, Esq. SBN 190164
4 Rebecca M. Westmore, Esq. SBN 148152
5 45 Fremont Street, 21st Floor
6 San Francisco, California 94105
7 Telephone: 415/538-4133
8 Facsimile: 415/904-5490

9 Attorneys for the
10 California Department of Insurance

11
12
13 **BEFORE THE INSURANCE COMMISSIONER**
14 **OF THE STATE OF CALIFORNIA**
15 **SAN FRANCISCO**

16 In the Matter of the Certificate of Authority
17 of:

18 STEWART TITLE GUARANTY
19 COMPANY,

20 Respondent.

File No. DISP05048942
OAH No. N2006110084

STIPULATION AND WAIVER

Hearing: August 27, 2007

21 Respondent, STEWART TITLE GUARANTY COMPANY ("STEWART TITLE") and the
22 California Department of Insurance ("DEPARTMENT") stipulate as set forth herein:

23 1. STEWART TITLE holds a Certificate of Authority to transact the business of
24 title insurance in the State of California, pursuant to §700 et seq. of the California Insurance
25 Code¹; and,

26 2. On November 3, 2004, the DEPARTMENT began examining certain

1 practices of STEWART TITLE, pursuant to California Insurance Code §§730 and 12414.21, to
2 determine whether certain reinsurance arrangements entered into between STEWART TITLE and
3 various settlement service providers, from on or about August 1998 through December 31, 2006,
4 violated state and federal law. The investigation included an examination of STEWART
5 TITLE'S documents relating to the negotiation of captive reinsurance arrangements; an
6 examination of STEWART TITLE'S captive reinsurance arrangements with a title agent, lender,
7 and various homebuilders; an examination of documents received from STEWART TITLE and
8 others subsequent to the filing of an Accusation; an examination of STEWART TITLE'S
9 Financial Statements and premium and loss reportings; and an examination of STEWART
10 TITLE'S Annual Statements; and,
11

12 3. On or about August 29, 2006, the DEPARTMENT caused to be served upon
13 STEWART TITLE an Accusation, Notice of Noncompliance, Demand for Monetary Penalty, and
14 Right to Issue Order to Show Cause, denominated "In the Matter of the Certificate of Authority
15 of: STEWART TITLE GUARANTY COMPANY, Respondent," File No. DISP05048942, and
16 subsequently caused to be served upon STEWART TITLE a First Amended Accusation on May
17 18, 2007, and a Second Amended Accusation on June 27, 2007² (collectively "Accusation"),
18 incorporated herein by reference. Said Accusation alleged, inter alia, that STEWART TITLE
19 engaged in activities which constitute an unfair method of competition and/or unfair or deceptive
20 acts or practices, in violation of California Insurance Code §§790.03(d), 790.03(e), and 790.06(a);
21 filed false annual and financial statements; in violation of California Insurance Code §§900 and
22 900.9; and engaged in unlawful rebate activities in violation of the requirements and standards of
23 Article 6, Chapter 1, Part 6, Division 2 (commencing with §12404) of the Insurance Code; and,
24
25
26

¹ Unless otherwise stated, all references are to the California Insurance Code.

² The First and Second Amended Accusations withdrew allegations of violations of §§700, 703(c) and federal law.

1 4. On or about October 10, 2006, STEWART TITLE filed a Notice of Defense
2 denying all allegations, including, inter alia, that it entered into any unlawful captive reinsurance
3 arrangements in California, and requesting a hearing.

4 5. STEWART TITLE and the DEPARTMENT, in order to avoid the expense,
5 uncertainty and distractions of litigation, have undertaken discussions to resolve the issues in this
6 proceeding and now wish to resolve those issues without the need for a hearing or further
7 administrative action; therefore STEWART TITLE, by this Stipulation and Waiver, waives any
8 and all rights to a hearing in this matter, and any and all other rights related to this proceeding
9 which may be accorded pursuant to Chapter 5, Part 1, Division 3, Title 2 (commencing with
10 §11500) of the California Government Code, and by the California Insurance Code; and,
11

12 6. This Stipulation and Waiver does not constitute an admission of wrongdoing by
13 STEWART TITLE; and,
14

15 7. STEWART TITLE agrees to and shall Cease and Desist from engaging in captive
16 reinsurance business arrangements in California which may be in violation of California
17 Insurance Code §§12404 and 12405 upon written Order of the Insurance Commissioner in the
18 form attached hereto and hereby incorporated as Exhibit A (the "Order") to be made and filed
19 herein and without further notice to STEWART TITLE. In the event a court of final jurisdiction,
20 legislation, or regulatory action authorizes such captive reinsurance arrangements in the State of
21 California in the future, nothing in this Stipulation and Waiver shall preclude STEWART TITLE
22 from acting in accordance with the decision of the court of final jurisdiction, legislation, or
23 regulatory action at such time; and,
24

25 8. STEWART TITLE agrees to and shall Cease and Desist from engaging in unfair
26 methods of competition and unfair and deceptive acts or practices in the business of title
insurance in violation of, or noncompliant with, California Insurance Code §§790.03(d),

1 790.03(e), 790.06(a), and 900, 900.8, 900.9 upon written Order of the Insurance Commissioner to
2 be made and filed herein and without further notice to STEWART TITLE; and,

3 9. STEWART TITLE agrees to and shall comply with the provisions of California
4 Insurance Code §§12404, 12405, and 12406 prohibiting illegal rebate/inducement activities upon
5 written Order of the Insurance Commissioner to be made and filed herein and without further
6 notice to STEWART TITLE; and,

7
8 10. STEWART TITLE agrees to and shall pay, within ten (10) business days after
9 receiving an invoice from the California Department of Insurance, Division of Accounting, the
10 amount of one million four hundred dollars (\$1,000,400.00) to the California Department of
11 Insurance as a monetary penalty pursuant to California Insurance Code §§12409, 12976, and
12 790.035 upon written Order of the Insurance Commissioner to be made and filed herein and
13 without further notice to STEWART TITLE; and,

14
15 11. This Stipulation and Waiver resolves fully the matters alleged or arising out of, the
16 allegations in File No. DISP05048942; and,

17 12. This Stipulation and Waiver and the subsequent Order of the Commissioner shall
18 not be used as evidence of the truth of the facts alleged by the Commissioner herein or in the
19 Accusation referenced herein; and,

20 13. Neither this Stipulation and Waiver nor the Order approving this Stipulation and
21 Waiver are in any way intended to limit or waive the Commissioner's authority to bring further
22 disciplinary action against STEWART TITLE for violations not covered by the Accusation or this
23 Stipulation and Waiver, whether such violations occurred prior to or subsequent to the date of this
24 Stipulation and Waiver; and,

25
26 14. Nothing contained in this Stipulation and Waiver or the Order approving this
Stipulation and Waiver shall prevent the DEPARTMENT from taking action at any time to

1 enforce this Stipulation and Waiver or the Order approving this Stipulation and Waiver if
2 STEWART TITLE are not in compliance with the terms and conditions of the Stipulation and
3 Waiver and/or the Order approving this Stipulation and Waiver; and,

4 15. The Insurance Commissioner retains jurisdiction to ensure that STEWART TITLE
5 complies with the provisions and terms of this Stipulation and Waiver and/or Order approving
6 this Stipulation and Waiver; and,

7 16. STEWART TITLE represents and warrants that the persons executing this
8 Stipulation and Waiver on behalf of STEWART TITLE are authorized to enter into and execute
9 this Stipulation and Waiver; and,

10 17. Pursuant to California Insurance Code §12921(b)(1), this Stipulation and Waiver is
11 not final unless and until approved by the Insurance Commissioner as evidenced by an Order of
12 the Commissioner expressly adopting this Stipulation and Waiver; and,

13 18. This Stipulation and Waiver is a compromise within the meaning of California
14 Evidence Code §§1152 and 1154, and California Government Code §11415.60.

15 Dated: August 11, 2007

16 STEWART TITLE GUARANTY COMPANY

17 Signed: 

18 Name: Michael Skalka

19 Title: President

20 Dated: August __, 2007

21 SIDLEY AUSTIN LLP

22 By: _____

23 Joshua E. Anderson
24 Attorneys for Respondent
25 STEWART TITLE GUARANTY
26 COMPANY

1 enforce this Stipulation and Waiver or the Order approving this Stipulation and Waiver if
2 STEWART TITLE are not in compliance with the terms and conditions of the Stipulation and
3 Waiver and/or the Order approving this Stipulation and Waiver; and,

4 15. The Insurance Commissioner retains jurisdiction to ensure that STEWART TITLE
5 complies with the provisions and terms of this Stipulation and Waiver and/or Order approving
6 this Stipulation and Waiver; and,

7 16. STEWART TITLE represents and warrants that the persons executing this
8 Stipulation and Waiver on behalf of STEWART TITLE are authorized to enter into and execute
9 this Stipulation and Waiver; and,

10 17. Pursuant to California Insurance Code §12921(b)(1), this Stipulation and Waiver is
11 not final unless and until approved by the Insurance Commissioner as evidenced by an Order of
12 the Commissioner expressly adopting this Stipulation and Waiver; and,

13 18. This Stipulation and Waiver is a compromise within the meaning of California
14 Evidence Code §§1152 and 1154, and California Government Code §11415.60.

15 Dated: August __, 2007

16 STEWART TITLE GUARANTY COMPANY

17 Signed: _____

18 Name: Michael Skalka

19 Title: President

20 Dated: August 11, 2007

21 SIDLEY AUSTIN LLP

22 By: _____

23 Joshua E. Anderson

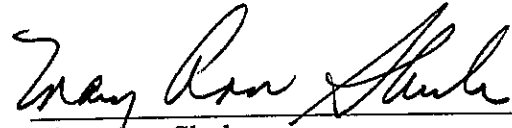
24 Attorneys for Respondent

25 STEWART TITLE GUARANTY
26 COMPANY

1 Dated: August 11, 2007

CALIFORNIA DEPARTMENT OF INSURANCE

2
3 By:



Mary Ann Shulman
Rebecca M. Westmore
Senior Staff Counsel

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 EXHIBIT A
2 BEFORE THE INSURANCE COMMISSIONER
3 OF THE STATE OF CALIFORNIA
4 SAN FRANCISCO
5

6 In the Matter of the Certificate of Authority
7 of:

File No. DISP05048942
OAH No. N2006110084

8 STEWART TITLE GUARANTY
9 COMPANY,

ORDER RE STIPULATION AND WAIVER

10
11 Respondent.
12

13
14 WHEREAS, on or about August 29, 2006, the Commissioner of Insurance (hereafter
15 "Commissioner") caused to be served upon STEWART TITLE GUARANTY COMPANY
16 (hereafter "STEWART TITLE") an Accusation, Notice of Noncompliance, Demand for
17 Monetary Penalty, and Right to Issue Order to Show Cause, denominated "In the Matter of the
18 Certificate of Authority of: STEWART TITLE GUARANTY COMPANY, Respondent," File
19 No. DISP05048942, and subsequently caused to be served upon STEWART TITLE a First
20 Amended Accusation on May 18, 2007 and a Second Amended Accusation on June 27, 2007,
21 (hereafter collectively "Accusation"). Said Accusation is incorporated herein by reference, and
22 alleged that STEWART TITLE engaged in activities which constitute an unfair method of
23 competition and/or unfair or deceptive acts or practices, in violation of California Insurance Code
24 §§790.03(d), 790.03(e), and 790.06(a); filed false annual and financial statements, in violation of
25 California Insurance Code §§900 and 900.9; and engaged in unlawful rebate activities in violation
26 of the requirements and standards of Article 6, Chapter 1, Part 6, Division 2 (commencing with

1 §12404) of the Insurance Code; and,

2 WHEREAS, Respondent has executed a Stipulation and Waiver in which it waived its
3 rights to a hearing in this matter, and any other rights which may be accorded pursuant to the
4 provisions of the California Administrative Procedure Act (Government Code Sections 11500-
5 11528) or California Insurance Code, and has stipulated to the entry of this Order. Said
6 Stipulation and Waiver is incorporated herein by reference; and,
7

8 GOOD CAUSE APPEARING,

9 IT IS HEREBY ORDERED that STEWART TITLE shall Cease and Desist from
10 engaging in captive reinsurance business arrangements in California which may be in violation of
11 California Insurance Code §§12404 and 12405; and,

12 IT IS FURTHER ORDERED that STEWART TITLE shall Cease and Desist from
13 engaging in unfair methods of competition and unfair and deceptive acts or practices in the
14 business of title insurance in violation of, or noncompliant with, California Insurance Code
15 §§790.03(d), 790.03(e), 790.06(a), 900, 900.8, and 900.9; and,
16

17 IT IS FURTHER ORDERED that STEWART TITLE shall comply with the provisions of
18 California Insurance Code §§12404, 12405, and 12406 prohibiting illegal rebate/inducement
19 activities; and,

20 IT IS FURTHER ORDERED that STEWART TITLE shall pay, within 10 business days
21 of receipt of an invoice from the California Department of Insurance, Division of Accounting, the
22 amount of one million four hundred dollars (\$1,000,400.00) to the California Department of
23 Insurance ("DEPARTMENT") as a monetary penalty pursuant to California Insurance Code
24 §§12409, 12976, and 790.035 in settlement of the Accusation; and,
25

26 //

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS FURTHER ORDERED that this Order shall become effective immediately upon the date set forth below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal, this _____ day of August, 2007.

STEVE POIZNER
Insurance Commissioner

By: _____/s/_____
STEVE POIZNER
Insurance Commissioner